Te Cheng Hoi v Peh Im Kweng

HIGH COURT (PENANG) — CIVIL SUIT NO 22–419–80
VINCENT NG J
11 APRIL 1994

Civil Procedure *— Want of prosecution — Striking out — Court's express and inherent powers — When exercisable — Rules of the High Court 1980 O 19 r 1, O 34 rr 2(2) & 8(2)*

Civil Procedure *— Want of prosecution — Striking out — Court's express and inherent powers — Whether power can be exercised during limitation period of action — Rules of the High Court 1980 O 19 r 1*

Civil Procedure *— Want of prosecution — Striking out — Delay in filing statement of claim — Prejudice to defendant — What amounts to prejudice — Rules of the High Court 1980 O 19 r 1*

Civil Procedure *— Want of prosecution — Striking out — Whether res judicata*

Civil Procedure *— Want of prosecution — Striking out — Delay by plaintiff's lawyer — Rules of the High Court 1980 O 19 r 1*

Civil Procedure *— Want of prosecution — Striking out — Delay in filing statement of claim — Interim injunction maintained for three years — Abuse of process of court — Rules of the High Court 1980 O 19 r 1*

Civil Procedure *— Want of prosecution — Striking out — Delay in filing statement of claim — Three-year delay — Whether intentional and contumelious — Rules of the High Court 1980 O 19 r 1*

Civil Procedure *— Want of prosecution — Striking out — Delay in filing statement of claim — Whether court can award costs to defendant even if defendant's application denied — Rules of the High Court 1980 O 34 rr 2(2) & 8(2)*

Civil Procedure *— Want of prosecution — Striking out — Delay in filing statement of claim — Show cause notice — Failure to explain delay — Effect*

Civil Procedure *— Pleadings — Statement of claim — Time for filing — Interim injunction obtained — Failure to file statement of claim within 14-day life-span of interim injunction — Effect*

The plaintiff filed a generally endorsed writ of summons in November 1990 praying for certain reliefs in respect of land ('the land') owned by him but occupied by the defendant. On 23 November 1990, the plaintiff was granted an interlocutory injunction to, inter alia, restrain the defendant from selling or dealing with the fruit trees or fruits harvested from the fruit trees on the land. Thereafter, the plaintiff made no attempt to file his statement of claim.

On 24 November 1993, the defendant filed this application to strike out the plaintiff's suit under O 19 r 1 of the Rules of the High

Court 1980 ('the RHC') for failure to file a statement of claim and under the inherent jurisdiction of the court for want of prosecution. A

Subsequently, on 30 November 1993, the plaintiff filed his statement of claim which disclosed that he was claiming for income from durian trees grown on the land and for an injunction such as had been granted to him earlier. The plaintiff did not claim for ejectment or make an O 89 application. B

Held, allowing the defendant's application to strike out the plaintiff's suit:

(1) The court's express power (under O 34 rr 2(2) and 8(2)) and inherent power to dismiss actions which are not pursued with C sufficient expedition, should not be exercised unless the default is intentional and contumelious; or inordinate and inexcusable and likely to impair a fair trial or cause serious prejudice to the defendant.

(2) For practical reasons and not as a matter of principle, the power to dismiss should not be exercised during the limitation period of D the cause of action as the plaintiff may then file a fresh action immediately following such dismissal.

(3) If the delay is ex facie inordinate, the inference is that it is likely to cause serious prejudice to the defendant who may not have a fair trial due to the death or disappearance of his witnesses or loss E or destruction of records and also by the uncertainty of the action hanging over his head indefinitely. In this case, the delay had gravely prejudiced the defendant who was, for three years, unaware whether the plaintiff's claim was for ejectment or for the fruits harvested from the land, and who had the action hanging over his head indefinitely, not knowing when it would be brought to trial. F

(4) Dismissal of an action for want of prosecution does not operate as res judicata as it is not a decision on the merits of the case.

(5) An inordinate or inexcusable delay is not confined to the action or inaction of the plaintiff himself but also applies to that of his lawyer. G

(6) By maintaining the injunction without a statement of claim, the plaintiff had used the court process to prolong a litigation in order to exhaust the defendant's finances and force him to quit on his own. As there was no claim for vacant possession, the injunction was in effect an indirect attempt to secure the effect of an ejectment order, without expressly claiming for the same. That was abuse of H the process of court and showed that the delay was inordinate and inexcusable and had prejudiced the fair trial of the action.

(7) The plaintiff's three-year delay in filing the statement of claim was unduly long, inordinate, excessive and inexcusable. The delivery of the statement of claim after the defendant's application to I dismiss the suit showed that the delay was intentional and contumelious and justified a dismissal for want of prosecution. The delay was even more contumelious because the plaintiff had

A secured the benefit of an interim injunction (an equitable relief) upon a discretion exercisable by the court only in very exceptional circumstances, in the absence of a statement of claim.

(8) Even if the defendant's application to dismiss was not allowed because the plaintiff had, following the application, set the action down for trial, the court may award costs for the application to the defendant under O 34 rr 2(2) and 8(2), for having assisted the court to arouse the plaintiff from his slumber by an application to strike off.

(9) Where the plaintiff receives a show cause notice from the court why the action should not be dismissed for want of prosecution, a failure to explain his non-compliance is nothing but an intentional and contumelious act, disrespectful of the court.

Per curiam:
In the event that an interim injunction is granted, the details of the plaintiff's claim ought to be filed well within the 14-day life-span (under the new rules) of the interim injunction. Any default in observing the 14-day period ought to be deemed an inordinate delay.

[Bahasa Malaysia summary

Plaintif telah memfailkan suatu writ saman yang diindors secara am pada November 1990 untuk memohon relief tertentu berkenaan dengan sebidang tanah ('tanah itu') yang dimiliki olehnya tetapi dihuni oleh defendan. Pada 23 November 1990, plaintif telah diberikan suatu injunksi interlocutori untuk, antara lain, menghalang defendan daripada menjual atau berurusan dengan pokok buah atau buah-buahan yang dipetik daripada pokok di atas tanah itu. Selepas itu, plaintif tidak mengambil sebarang tindakan untuk memfailkan pernyataan tuntutannya.

Pada 24 November 1993, defendan telah memfailkan permohonan ini untuk membatalkan guaman plaintif di bawah A 19 k 1 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT itu') kerana kegagalannya untuk memfailkan suatu pernyataan tuntutan dan di bawah bidang kuasa sedia ada mahkamah kerana ketiadaan pendakwaan.

Kemudiannya, pada 30 November 1993, plaintif telah memfailkan pernyataan tuntutannya yang mendedahkan bahawa beliau membuat tuntutan untuk pendapatan yang diperolehi daripada pokok durian yang ditanam di atas tanah itu dan untuk suatu injunksi seperti yang telah diberikan kepadanya dahulu. Plaintif tidak membuat tuntutan untuk mengusir defendan atau membuat suatu permohonan di bawah A 89.

Diputuskan, membenarkan permohonan defendan untuk membatalkan guaman plaintif:

(1) Kuasa nyata mahkamah (di bawah A 34 k 2(2) dan k 8(2)) dan kuasa sedia ada mahkamah untuk membatalkan tindakan yang

tidak didakwa dengan kecepatan yang mencukupi, tidak seharusnya digunakan kecuali jika keingkaran itu sengaja dilakukan dan patut dihina; ataupun keingkaran itu keterlaluan dan tidak boleh dimaafkan dan mungkin menjejaskan perbicaraan adil atau menyebabkan kemudaratan yang serius kepada defendan.

(2) Atas sebab-sebab yang praktikal dan bukan sebagai suatu perkara prinsip, kuasa untuk membatalkan sesuatu tindakan tidak seharusnya digunakan di dalam had masa tindakan itu kerana plaintiff boleh kemudiannya dengan segera memfailkan suatu tindakan baru selepas pembatalan itu.

(3) Jika kelengahan itu adalah keterlaluan secara ex facie, inferensnya adalah bahawa ia akan menyebabkan kemudaratan serius kepada defendan yang mungkin tidak boleh mendapat suatu perbicaraan yang adil akibat kematian atau kehilangan saksinya ataupun kehilangan atau pemusnahan rekod dan juga kerana ketidakpastian tindakan itu yang mengganggu fikirannya bagi tempoh masa yang tidak pasti. Di dalam kes ini, kelengahan itu telah memudaratkan defendan itu secara serius kerana selama tiga tahun, beliau tidak mengetahui sama ada tuntutan plaintif adalah untuk mengusirnya atau mendapatkan buah-buahan yang dihasilkan oleh tanah itu, dan tindakan itu telah mengganggu fikirannya bagi tempoh masa yang tidak pasti, tanpa diketahui beliau bila tindakan itu akan dibicarakan.

(4) Pembuangan suatu tindakan kerana ketiadaan perbicaraan tidak beroperasi sebagai res judicata kerana ia tidak merupakan suatu keputusan yang dibuat atas merit kes itu.

(5) Suatu kelengahan yang keterlaluan atau yang tidak boleh dimaafkan tidak terhad kepada perbuatan atau ketidakgiatan plaintif sendiri tetapi juga terpakai kepada peguamnya.

(6) Dengan mengekalkan injunksi itu tanpa suatu pernyataan tuntutan, plaintif telah menggunakan proses mahkamah untuk melanjutkan suatu guaman bagi tujuan menghabiskan kewangan defendan dan memaksanya meninggalkan tanah itu dengan sendirinya. Oleh kerana tidak ada tuntutan untuk milikan kosong, pada hakikatnya injunksi itu merupakan suatu percubaan tidak langsung untuk mendapatkan kesan suatu perintah pengusiran, tanpa memohon secara langsung untuk perintah itu. Itu merupakan suatu penyalahgunaan proses mahkamah dan menunjukkan bahawa kelengahan itu keterlaluan dan tidak boleh dimaafkan dan telah menjejaskan perbicaraan adil tindakan itu.

(7) Kelengahan plaintif selama tiga tahun sebelum pernyataan tuntutan itu difailkan adalah terlalu panjang, keterlaluan, dan tidak boleh dimaafkan. Penyampaian pernyataan tuntutan selepas permohonan defendan untuk membatalkan guaman itu menunjukkan bahawa kelengahan itu sengaja dilakukan dan patut dihina dan menjustifikasikan suatu pembatalan guaman itu kerana ketiadaan perbicaraan. Kelengahan itu lebih keji lagi kerana plaintif telah

A mendapatkan faedah suatu injunksi interim (suatu relief ekuiti) yang diberikan mengikut budi bicara mahkamah yang digunakan hanya dalam kes yang sangat luarbiasa, tanpa suatu pernyataan tuntutan.

(8) Sekalipun permohonan defendan untuk membatalkan guaman plaintif tidak dibenarkan kerana plaintif, selepas permohonan itu, B telah menetapkan tindakan itu untuk perbicaraan, mahkamah boleh mengawardkan kos permohonan itu kepada defendan di bawah A 34 k 2(2) dan k 8(2), kerana menolong mahkamah membangunkan plaintif dari tidurnya melalui suatu permohonan untuk membatalkan tindakannya.

C (9) Di mana plaintif menerima suatu surat daripada mahkamah untuk menunjuk kausa mengapa tindakan itu tidak seharusnya dibatalkan kerana ketiadaan pendakwaan, suatu kegagalan untuk menerangkan ketidakpatuhannya merupakan suatu perbuatan yang sengaja dan patut dihina, yang tidak menghormati mahkamah.

D **Per curiam**:
Jika suatu injunksi interim diberikan, butir-butir tuntutan plaintif sepatutnya difailkan dalam tempoh hidup 14 hari (di bawah kaedah-kaedah baru) injunksi interim itu. Sebarang keingkaran dalam mematuhi tempoh 14 hari itu seharusnya dianggap sebagai suatu E kelengahan yang keterlaluan.]

Notes
For cases on dismissal for want of prosecution, see 2 *Mallal's Digest* (4th Ed) paras 2382–2383; [1989] Mallal's Digest 570; [1990] Mallal's Digest 447–450; [1991] Mallal's Digest 504–506; and [1992] Mallal's F Digest 399–400.

Cases referred to
1 *Clough v Clough* [1968] 1 All ER 1179; [1968] 1 WLR 525 (folld)
2 *Biss v Lambeth, Southwark and Lewisham Area Health Authority (Teaching)* [1978] 2 All ER 125; [1978] 1 WLR 382 (refd) G
3 *Wallersteiner v Moir* [1974] 3 All ER 217; [1974] 1 WLR 991 (refd)
4 *Birkett v James* [1978] AC 297; [1977] 2 All ER 801; [1977] 3 WLR 38 (refd)
5 *Vasudevan v T Damodaran & Anor* [1981] 2 MLJ 150 (refd)
H 6 *Toh Hock Thye & Ors v Toh Chwee Biow* [1982] 1 MLJ 152 (refd)
7 *Hytrac Conveyors Ltd v Conveyors International Ltd* [1982] 3 All ER 415; [1983] 1 WLR 44 (folld)
8 *Lim Gait Tong v Peninsular Land Development Bhd & Anor* [1982] 1 MLJ 330 (refd)
I 9 *Datuk Samy Vellu v Karpal Singh* [1989] 3 MLJ 493 (refd)
10 *Leong Seng Kiat v Law Peng Guan & Ors* [1992] 2 CLJ 825 (refd)
11 *Confidence Concrete Sdn Bhd v Shimizu-Peremba Sdn Bhd* [1994] 1 MLJ 465 (refd)

12 *Thong Chuan Ching & Anor v Toshiba Electronic Malaysia Sdn Bhd* [1983] 1 MLJ 254 (refd)
13 *Allen v Sir Alfred McAlpine & Sons Ltd* [1968] 2 QB 229; [1968] 1 All ER 543; [1968] 2 WLR 366 (folld)

John Khoo (*Ismail, Khoo & Associates*) for the plaintiff.
R Rajasingam (*Rajasingam & Co*) for the defendant.

Vincent Ng J: The plaintiff had, through his former solicitors, filed a generally endorsed writ of summons ('the generally indorsed writ') dated 16 November 1990 (encl 1) praying for certain reliefs in respect of a piece of land known as Lot No 44, Mukim 14, North East District, Penang ('the said land').

By a summons-in-chambers (encl 62), the defendant had applied for the plaintiff's suit herein to be struck off under O 19 r 1 for having defaulted in filing a statement of claim and under the inherent jurisdiction of the court for want of prosecution, on the grounds which appear sufficiently in the affidavit of the defendant, Peh Im Kweng, affirmed on 23 November 1993 (encl 61).

It was opposed by the plaintiff on grounds appearing in his affidavit affirmed on 15 December 1993 (encl 66).

There was also an application by the plaintiff (encl 65) for an order that the defendant pay certain amounts of income allegedly earned from the said land to the plaintiff or alternatively, that such amounts be deposited in court (presumably until the outcome of the trial of the suit).

It was agreed that encl 62 should be heard first and the court could then immediately proceed to hear encl 65 should the defendant fail in encl 62.

The generally indorsed writ (encl 1) had, inter alia, prayed for:

(1) An injunction to restrain the defendant by himself, his servants or agents or otherwise howsoever from doing the following acts or any of them, that is to say:
   (a) preventing the plaintiff, his servants or agents from having access to all that land known as Lot No 44, Mukim 14, North East District, Penang or any part thereof;
   (b) preventing or attempting in any other way to prevent the plaintiff, his servants or agents from harvesting and marketing the fruits harvested from the said land;
   (c) selling, disposing of or in any way dealing with the fruit trees on the said land or any of them or the fruits harvested from the said fruit trees; and
   (d) clearing the said land or any part thereof and replanting the same with new fruit trees or plants.
(2) Damages.
(3) An account of all sales by the defendant of all fruits harvested from the said land from 1 February 1990 onwards.

(4) Payment of the amount found to be due to the plaintiff on the taking of such account and interest thereon at such rate and for such period as the court shall think fit.

(5) Costs.

Enclosure 1 appears to have been filed for the purpose of obtaining — and the plaintiff did obtain — an ex parte interim injunction (encl 7) dated 23 November 1990 whereby prayer 1(a)–(d) of the generally indorsed writ was granted.

Subsequently, upon a hearing inter partes on 25 May 1991, the interim injunction was varied to the extent that the plaintiff undertook not to do any work on the said land and to allow the defendant to harvest the fruits on the land subject to accounts in writing being rendered by the defendants showing income derived from and expenses incurred in respect of the said land.

On 24 November 1993, the defendant filed the current application under encl 62 for the plaintiff's claim to be struck off for want of prosecution. Only thereafter, that is, subsequent to the filing of this application was the plaintiff moved to file his statement of claim dated 30 November 1993 (encl 63).

In encl 63, the plaintiff had:

(i) asserted that he was the registered owner of the title to the said land;

(ii) acknowledged that the said land had been leased to the defendant's father by its former owner by virtue of lease agreements dated 15 February 1955, 15 February 1958, 22 March 1960, 15 February 1964, 15 January 1967 and 15 January 1970; and

(iii) asserted that the defendant's father had continued to work on the land after 1970 but without any lease, and as a trespasser. Clause 18 of encl 63 apparently discloses for the first time that the objective or subject matter of the suit was a claim for income from the durian trees grown on the said land, as it was stated therein that 'the estimated yield or income of the defendants from the said land on the sale of durians, during the durian season was between RM400 to RM500 per day'.

The prayers for the injunction and damages expressed in encl 63 were the same as set out in the encl 1 filed 3 years and 10 days earlier.

Quite strangely, the plaintiff made no claim for vacant possession of the land (which at any rate could have been instituted in the lower court) considering that the defendant had never disputed the plaintiff's title.

The principles involved pertaining to the exercise of the court's discretion in an application under O 19 r 1, O 34 rr 2(2) and 8 of the Rules of the High Court 1980 ('the RHC') and the inherent jurisdiction of the court, for the dismissal of an action for want of prosecution are common and could be distilled from a welter of English and Malaysian cases, namely, *Clough v Clough*,[1] *Biss v Lambeth, Southwark and Lewisham Area Health Authority (Teaching)*,[2] at p 389, *Wallersteiner v Moir*,[3] *Birkett v James*,[4] *Vasudevan v T Damodaran & Anor*,[5] *Toh Hock Thye & Ors v Toh Chwee Biow*,[6] *Hytrac*

Conveyors Ltd v Conveyors International Ltd,[7] *Lim Gait Tong v Peninsular Land Development Bhd & Anor*,[8] *Datuk Samy Vellu v Karpal Singh*,[9] *Leong Seng Kiat v Law Peng Guan & Ors*[10] and *Confidence Concrete Sdn Bhd v Shimizu-Peremba Sdn Bhd*.[11]

The court is guided by the following principles culled from the above cases:

(1) The court possesses *an express power* under O 34 rr 2(2) and 8(2) exercisable in the event of a plaintiff's gross delay or non-compliance with certain rules of the RHC governing the period for compliance with certain procedures essential for the expeditious disposal of the case, eg delivery of a statement of claim (under O 19 r 1), taking out a summons for directions (under O 25 r 1(4) and the case of *Leong Seng Kiat*[10]), setting down for trial (under O 34 r 2 and see the case of *Thong Chuan Ching & Anor v Toshiba Electronic Malaysia Sdn Bhd*[12]) and also an inherent power to dismiss actions which are not being pursued with sufficient expedition.

(2) The express and inherent powers should not be exercised unless the court is satisfied either that the default has been intentional and contumelious (in *Allen v Sir Alfred McAlpine & Sons Ltd*[13] and in *Vasudevan*[5]) or that the delay has been inordinate and inexcusable on the part of the plaintiff or his legal advisers and such delay is likely to impair a fair trial or to cause or to have caused serious prejudice to the defendants either as between themselves, or themselves and the plaintiff or between them and the third party (in *Allen*[13]).

(3) Purely for practical reasons, and not as a matter of principle, the power to dismiss should not normally be exercised during the currency of the limitation period of the cause of action. (See *Vasudevan*'s case.[5]) However, no burden is placed on the defendant to show that such limitation period has expired. The non-expiry of the limitation period may influence the court not to dismiss an action that is pending as the plaintiff may then file a fresh action immediately following such dismissal. (See *Birkett v James*.[4]) But on the other hand, the court may also dismiss an action where the substantive cause of action is not subject to the statutory limitation period (See *Toh Hock Thye & Ors*[6] at p 154, last paragraph.)

(4) On the question of inordinate or inexcusable delay, the general rule is that unless and until credible excuse is made out, the natural inference would be that it is inexcusable, and it is for the plaintiff to discharge this inference. (See *Allen*'s case[13] which was cited with approval in *Vasudevan*'s case.[5])

(5) Also, if the delay is ex facie inordinate, the inference is that such delay is likely to cause or has caused serious prejudice to the defendants (see *Vasudevan*'s case[5]). That the plaintiff's inordinate and inexcusable delay can give rise to a grave risk of the defendant not having a fair trial because his important witnesses whose evidence is crucial to his case may die or disappear, is clearly illustrated by the facts of *Lim Gait Tong v Peninsular Land Development Bhd & Anor*.[8]

(6) Such prejudice to the defendant is not limited to death or disappearance of witnesses or their fading memories or to the loss or destruction of records but also to the uncertainty of the action hanging over his head indefinitely, not knowing when it is going to be brought to trial. (See *Biss v Lambeth.*[2])

(7) An inordinate or inexcusable delay is not confined to the action or inaction of the plaintiff himself but also to that of his lawyer. (See *Toh Hock Thye*'s case.[6])

(8) Where the plaintiff has maintained an action, neither desiring nor intending to bring it to trial but hoping, eg to place a gag on his critics (see *Wallersteiner*'s case[3]), or, in my view, to secure an injunction against the defendant and thereafter to maintain the status quo, this would amount to abuse of the process of court and would show that the delay had been inordinate and inexcusable and had prejudiced the fair trial of the action.

(9) The delivery of the statement of claim by the plaintiffs following an inordinate delay and after the defendant had taken out a summons to dismiss for want of prosecution, would plainly show that the delay was intentional and contumelious and which would justify a dismissal of the case for want of prosecution. (See the cases of *Clough v Clough*[1] and *Hytrac Conveyors Ltd.*[7]) And similarly, in my view, the plaintiff's position would also be considerably weakened if after an inordinate delay he takes steps to set down the case for trial only after the defendant had taken out a summons to dismiss his claim for want of prosecution. This conduct would show that the plaintiff had let the action to go to sleep, and had it not been for the defendant's solicitors action in applying to dismiss the suit the plaintiff would still not have been aroused from his slumber.

(10) This court is also of the opinion that even if the application to dismiss the claim is not allowed by the court on the grounds that the plaintiff had, following the application to dismiss the claim, set the action down for trial, the court may yet award costs for the application to the defendant in exercise of its discretion clearly provided under O 34 rr 2(2) and 8(2), for having assisted the court to arouse the plaintiff from his slumber by an application to strike off.

(11) Where the plaintiff receives a show cause notice from the court why the action should not be dismissed for want of prosecution, a failure to explain his non-compliance is nothing but an intentional and contumelious act, disrespectful of the court. (See the Federal Court case of *Toh Hock Thye.*[6])

During the last decade, the English courts have become more willing to dismiss an action for want of prosecution. In the light of the above cases, it can be seen that Malaysian courts, like their English counterparts, are now also quite ready to strike down an inactive and dilatory plaintiff if he does not prosecute his case with due expedition. This salutary power of the court to dismiss cases for want of prosecution if exercised according to the principles laid down by the above-mentioned authorities, would help to

reduce delays, clear the backlog of cases and conduct itself within the right side of the maxim that justice delayed is injustice denied. An indolent plaintiff should not be tolerated as this may cause injustice to the defendant in terms of the availability and usability of his important witnesses and documentary evidence. It is nevertheless recognized that the dismissal of an action for want of prosecution does not operate as res judicata for being not a decision on the merits of the case.

Applying the principles adumbrated above and after hearing counsel, perusing the relevant affidavits and pleadings, I hold as follows:

The plaintiff's delay of three years in filing the statement of claim is unduly long, inordinate, excessive and inexcusable in the circumstances, as he had offered no satisfactory explanation save to say that the matter was previously handled by former solicitors and there were negotiations to settle the claim. His conduct is reprehensible when one considers that for years after he had obtained an ex parte interim injunction (as subsequently varied), he neither thought it fit nor felt obliged to render particulars of his claim to justify this injunction that he had secured from the court.

Due to the peculiar nature of the claim whereby a claim for ejectment formed no part of the claim (neither is it an O 89 application) this court accepts the contention of the defendant's counsel that the plaintiff's delay in filing the statement of claim was intentional and contumelious; and by maintaining the benefit of the post-injunction status quo for years without a statement of his claim, the plaintiff had used the court process to prolong a litigation in order to exhaust the defendant's finances and thus to force the defendant to quit on his own. See *Wallersteiner v Moir*.[3] The delay is that much more contumelious when the court has to consider that the plaintiff had secured the benefit of an interim injunction (it being an equitable relief) upon a discretion exercisable by the court only in very exceptional circumstances, in the absence of a statement of claim.

The plaintiff, by his inaction, had fallen into deep slumber and the contents of encls 61 and 66 point to a conduct which was clearly intentional and contumelious and which fell within the guiding propositions enunciated by Salmon LJ in *Allen*.[13] The court should not assist or condone indolence of any party, thereby slowing the speedy disposal of the action in court.

Even in the statement of claim that was eventually filed post-application to dismiss, the plaintiff had failed to disclose with sufficient particularity the plaintiff's actual cause of action. Here, it must be noted that the plaintiff admitted in his statement of claim that the defendant's father had come on to the land legally in the early part of 1955. This would indicate that in all probability the durian trees, from which the plaintiff now claims its fruits, were planted and cultivated by the defendant's father. As there was no claim for vacant possession, the injunction obtained by the plaintiff was in effect an indirect attempt to secure the effect of an ejectment order, without expressly claiming for the same.

The plaintiff's position was further weakened when one considers the fact that the statement of claim was filed after the application to strike off.

A This case falls fairly and squarely within the principles stated in *Clough v Clough*[1] and *Hytrac Conveyors Ltd v Conveyors International Ltd*[7] which I wholly agree with and adopt.

This prolonged and inexcusable delay has also, I think, done grave injustice to the defendant in that the defendant was, for the period of over three years, left without knowing what form the plaintiff's claim would take; B whether it would eventually be an action for ejectment or a mere claim for the yield or fruits harvested from plaintiff's land, thus leaving the defendant with nothing for his toil and labour on the said land which was apparently cultivated by the latter's father. And, as the plaintiff's claim did not seek to oust the defendant from occupation of the said land, this unresolved and C unsatisfactory status quo should not be allowed to continue ad infinitum; not to mention the prejudice in having an action hanging over the defendant's head indefinitely, not knowing when it is going to be brought to trial.

Indeed, a study of all the relevant pleadings and affidavits and hearing of oral submissions of counsel have revealed to me a sorry and outrageous state of affairs which called for the court's intervention.

D Besides the above factors that ought to be considered in favour of the defendant, it is now settled that an inordinate delay in filing pleadings would also as a rule attract the natural inference that serious prejudice (which increases with the length of delay) has been thereby caused to the defendant by the delay. See *Allen v Sir Alfred McAlpine & Sons Ltd.*[13] In any E event, there was nothing in the plaintiff's affidavits to rebut this inference in favour of the defendant.

It is said that since the nature of common law procedure for civil litigation is not inquisitorial but accusatorial, those who made charges have to state, right at the beginning, what those charges are and on what facts they are based.

F The reason being that, on a motion for an interlocutory injunction it is essential, for the purposes of seeing whether it should be granted, for the court to know the nature of the allegations which the plaintiff is making, for until at least a statement of claim has been delivered, the court could seldom know what the matters in question in the action were. It cannot be G right therefore, for a plaintiff to commence his action without knowing what form his statement of claim would take until the interlocutory proceedings are completed.

An application for an interim injunction is not normally entertained by the courts without the concurrent filing of a specially endorsed claim, save in exceptional cases of great urgency, and even then, upon counsel's H undertaking to file the claim as soon as possible thereafter. And, it is this court's view that in the event that an interim injunction is granted under such special circumstances, the details of the plaintiff's claim ought to be filed well within the 14-day life-span (under the new rules) of the interim injunction. I would even go further to say that, as the relief of injunction is I an equitable remedy and laches on the part of a party affects such remedy, a default in filing the plaintiff's claim within the 14-day period ought — considering the circumstances of such granting of interim injunction — to be deemed an inordinate delay.

Presumably, in the current case, the granting of the interim injunction must necessarily have been based on this implicit undertaking by the plaintiff to file his claim as soon as possible. The plaintiff's explanation, for this delay in filing the statement of claim, that there were ongoing negotiations for settlement between the parties served only to reinforce this court's suspicion that the then primary aim of the plaintiff's action in filing only the generally indorsed writ of summons (encl 1) was to secure an interim injunction and thereafter to wait to see what he could get from the defendant.

This is truly an unfortunate case replete with unexplained circumstances and conduct of counsel which the court ought not to condone.

In the event, I allowed the defendant's application (under encl 62) to strike out the plaintiff's claim, and costs of the action and this application to be taxed (unless agreed) was awarded to the defendant.

Application allowed.

Reported by Anne Khoo